

## **\*APPLICANT INCOME ONLY-TRUST**

THIS TRUST is made and entered into by and between the following:

Settlor: **\*REP** (hereinafter called "Settlor").

Trustee: **\*REP** (hereinafter called "Trustee").

W I T N E S S E T H:

WHEREAS, the Settlor desires to create an income-only trust to hold all of **\*APPLICANT's** income, but not principal or capital assets of hers, (all of said property being hereinafter referred to as the "Trust Estate") for the purposes hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Settlor agrees to execute such further instruments as shall be necessary to transfer said property to the Trust and the Trustee agrees to hold the Trust estate, IN TRUST, NEVERTHELESS, for the following uses and purposes and subject to the terms and conditions hereinafter set forth.

### ARTICLE I

#### DEFINITIONS

##### A. ADDITIONS TO CORPUS

The Settlor, or any other person with the consent of the Trustee, may add income of **\*APPLICANT**, as from time to time constituted, to the Trust Estate created herein by donation, grant or otherwise. Such additions shall be covered by the provisions hereof, the same as if originally included herein:

##### B. LAWS GOVERNING

This Agreement shall be construed, enforced and regulated in all respects by the laws of the State of Florida and in the Courts of the State of Florida.

##### C. BENEFICIARY

**\*APPLICANT** a nursing home patient, during his lifetime, but only to the extent noted, shall be considered the sole, vested, prime and first beneficiary of this Trust for all purposes and the Trustee shall consider him as the Trustee's primary interest and responsibility.

D. NAME OF TRUST

This Trust shall, for convenience, be known by the name following and it shall be sufficient that it be referred to as such in any deed, assignment, bequest or devise by that name, to wit:

**\*APPLICANT INCOME-ONLY TRUST**

E. PERSON/ENTITIES CONCERNED

The following are defined as persons or entities concerned with the provisions of this Trust:

1. **\*APPLICANT** (hereinafter called "Applicant") who is a patient at a skilled nursing home facility.
2. **\*REP**, wife of Applicant who is the Settlor and Trustee; and
3. The State of Florida, acting separately or through the Department of Children and Families, its successor or affiliate agencies (hereinafter called "State").

ARTICLE II

ADMINISTRATION DURING LIFETIME OF APPLICANT

A. IRREVOCABLE TRUST

This Trust is irrevocable except that:

- 1) Settlor may amend this Agreement to name new, successor or additional trustees;
- 2) Any Trustee may amend this Agreement to name one or more replacement or successor trustees to himself or herself; and

3) The Settlor or the Trustee may amend this Agreement in accordance with requests of the State or to comply with rules, regulations and/or law as may be existing from time to time.

#### B. PAYMENTS

During the lifetime of Applicant the Trustee shall manage, invest and reinvest the Trust Estate, collect the income thereof and shall monthly and totally pay over or apply the Trust Estate only as follows:

1) The sum of Thirty Five Dollars (\$35.00) and/or other amount allowed by the State to or for the benefit of Applicant for personal needs allowance and other entitlements; and

2) The balance thereof to apply to the cost of nursing home expense of Applicant.

Should Applicant leave nursing home residency, without intent to return, all income of Applicant, including income due Applicant for the month in which such change is made, shall be held and applied as provided in this Agreement, including, but not limited to the provisions of Article III-A hereof. However, income attributed to the month after the said changes of residence and/or after periods may be paid out of the trust and go directly to or for the benefit of Applicant as the Trustees deem necessary, wise and/or prudent regardless of other provisions of this Agreement.

### ARTICLE III

#### ADMINISTRATION UPON DEATH OF APPLICANT

##### A. EXPENSES AND COST OF ESTATE SETTLEMENT

Upon the death of the Applicant, the Trustees shall comply with all provisions of the law regarding reimbursement due the State for Medicaid benefits received by the Applicant to specifically include the priority of the State of Florida's claim as set forth in 42 U.S.C. section 1396. In the event that there are any funds available after full payment and satisfaction of the State of Florida's claim, then said funds may be utilized to pay other confirmed debts.

B. DISTRIBUTIONS

Upon the death of Applicant the balance of the Trust Estate, after the payments aforesaid, if any, shall be held, managed and distributed to or for the benefit of the then living issue of the applicant, in equal shares.

C. PAYMENT DELAYS

Any payment may be delayed as necessary to accommodate maturity dates of time deposits, payments of Trust expenses and Trust administrative duties.

ARTICLE IV

GENERAL PROVISIONS

A. PAYMENTS TO OR FOR BENEFICIARIES

The Trustee has sole and absolute discretion to make payments of principal and/or income to a beneficiary of this Trust in one (1) or more of the following four (4) ways as the Trustee deems best in her opinion: (i) directly to such beneficiary; (ii) to the legally appointed guardian or conservator of such beneficiary; (iii) to some relative or friend of the beneficiary for the care, support and/or education of such beneficiary; (iv) by the Trustee, using such amounts directly for such beneficiary's care, support and/or education.

B. SPENDTHRIFT PROVISIONS

No disposition, charge, or encumbrance of either the income or principal of any of the separate shares in trust or any part thereof, by any beneficiary hereunder (including the Settlor as beneficiary) by way of anticipation shall be of any validity or legal effect or be in anywise regarded by the Trustee, and no such income or principal, or any part, shall in anywise be liable to any claim of any creditor for any such beneficiary except in those cases where all of the credit extended, liability, claim and/or the assignment of the beneficiary's interest hereunder as collateral therefor was first approved in writing by the Trustee, in her absolute discretion. In exercising such discretion, the Trustee shall ascertain whether or not it would appear to be in the best interest of the beneficiary that credit be accepted, the claim or liability

be allowed and collateral given and may, without stated reason, decline to approve such credit, liability, claims and/or assignment.

C. PROTECTION AGAINST PERPETUITIES

All distributions required by this Trust Agreement and the final accounting of the Trust must be accomplished and finished as provided in this Agreement and, in any event, no later than twenty-one (21) years after Applicant's death.

ARTICLE V

POWERS AND DUTIES OF TRUSTEES

A. INVESTMENTS AND DUTIES

The Trustee and each Successor Trustee shall have all powers and authority conferred upon trustees by the laws of the State of Florida besides such additional powers and authority conferred by the provisions of this Agreement. In exercising such powers the Trustee shall be bound to do only what a reasonably prudent person would do in like circumstances.

The Trustee of each Trust established hereunder (including any Successor Trustee) shall have the continuing, absolute, discretionary power to deal with any property, real or personal, held in such Trusts. Such power may be exercised independently and without the prior or subsequent approval of any Court or judicial authority, and no person dealing with such Trustee shall be required to inquire into the propriety of any of the actions of such Trustee. The Trustee shall not be limited to the type, amount and character of investments in which the Trustee may invest the funds of this Trust, so long as the Trustee uses reasonable prudence and judgment in the selection of investments. In the event there are Co-Trustees hereof, such Co-Trustees are authorized to arrange that any account with any third party titled in the name of the Trustees or this Trust can be dealt with by less than all of the said Co-Trustees; for example, an account or asset that is titled in the name of all Co-Trustees or this Trust can be established or issued in such manner as to allow for the signature of less than all of the Co-

Trustees, including, but not limited to, only one of the Co-Trustees, to act upon such asset or account.

#### B. COMPENSATION

The Trustee shall receive no compensation to act as such. However, provided there are sufficient assets following the death of Applicant and the payment made pursuant to Article III A, and before any other distribution, the Trustee shall be entitled to receive reimbursement for all reasonable expenses incurred in the management and protection of the Trust Estate.

#### C. ACCOUNTING

The Trustee shall not be obliged to prepare and file annual or periodic accountings to any person or entity except that the Trustee shall account to the State and otherwise furnish to the State deposit and/or withdrawal information, expense and income information and other information as from time to time requested by the State.

#### D. DISABILITY OR INCOMPETENCY

1. Definitions: Any Trustee (including Settlor who acts as a Trustee) shall be automatically and forthwith discharged and removed from authority and duties of a fiduciary or trustee hereunder should he or she be deemed disabled or incompetent as defined herein. A Trustee or Settlor ("the questionable trustee") shall be deemed so disabled or incompetent to act as a trustee if any other Trustee hereunder shall receive in his possession any one of the following: (a) a writing from the questionable trustee's physician and a writing from a member of the questionable trustee's immediate family or another Trustee stating that the questionable trustee is too disabled or incompetent to make rational or prudent judgments or handle her personal affairs; (b) a court order which he deems jurisdictionally proper and currently applicable holding that the questionable trustee is legally incompetent to act in his own behalf or appointing a guardian of his person and/or property to act for him; (c) duly executed, witnessed and acknowledged written certificates, at least one (1) of which is unrevoked, of two (2) licensed physicians (each of whom represents that he or she is certified by a recognized medical board),

each certifying that he or she has examined the questionable trustee and has concluded that, by reason of accident, physical or mental illness, progressive or intermittent physical or mental deterioration or other similar cause, the questionable person is incompetent or disabled to act rationally and prudently in the questionable trustee's best interests, the interests of the Settlor or the interest of other beneficiaries hereunder; (d) evidence deemed credible and currently applicable that the questionable trustee has disappeared, is unaccountably absent or is being detained under duress, and, thus, unable to effectively and prudently look after his financial interests or that of the Settlor or other beneficiaries hereunder; (e) proof that the questionable Trustee is an inmate of or has entered into confinement, residence or daily care of a nursing home, mental institution, jail or prison; or (f) proof that the questionable trustee (or someone in his behalf) has applied for, is being considered for, intends to apply for or is entitled to receive (but for availability of payments or distributions to be made or which may be made under this Agreement) governmental assistance funds based on financial need of such questionable trustee, by reason of the questionable trustee's health physical or mental conditions.

2. Settlor: Should Settlor be deemed incompetent or disabled as above defined, besides revocation of all fiduciary powers and authority allowed to Settlor, Settlor shall automatically not have any right of election or decision as reserved to a Settlor by this Agreement or applicable law.

3. Restoration of Trusteeship Authority: If any of the writings, proofs, certificates or order as noted above in this Subparagraph D be negated, changed, canceled or abrogated, the questionable person (even if it is Settlor) who was removed from fiduciary authority shall automatically be restored to full fiduciary power and authority and rights of decision or election reserved to him by this Agreement.

## ARTICLE VI

### APPOINTMENT OF TRUSTEES

#### A. APPOINTMENT OF SUCCESSOR

1. Succession: The Settlor may appoint one or more other or different Successor Trustees by amendment to this Agreement or discharge a named Successor Trustee. A Trustee may appoint one or more persons or entities to serve as a Successor Trustee to himself or herself to take effect upon the death, incompetency, resignation or discharge of himself or herself.

**B. RESIGNATION**

Any Trustee or Successor Trustee may resign by instrument in writing.

**C. RIGHTS**

Any Successor Trustee shall have all the rights, powers, duties and discretion conferred or imposed on the original Trustee. No Successor Trustee shall be obliged to examine the accounts and actions of any previous Trustee. No Trustee shall be liable for any act or omission unless the same be due to such Trustee's own default. In no event shall a Corporate Trustee be a corporation owned or controlled by any beneficiary hereof.

**D. RESPONSIBILITY**

Any Successor Trustee shall become responsible for the applicable Trust Estate only when, as and if the same shall be received by said Trustee and, in determining such estate, such Trustee shall only be responsible to make a reasonable inquiry from the records of the prior Trustee which are available.

**E. NEW APPOINTMENT**

If none of the above named Trustee or Successor Trustees shall be serving as such, whether by reason of death, resignation, incompetency or discharge, Applicant or Applicant's legally appointed Guardian shall appoint a Successor Trustee or Trustees. Such Successor Trustee(s) must be one (1) or more competent adults, a trust company, bank or attorney

qualified to act as such, and, if a bank or trust company, must possess trust powers. In the event the Applicant or his legally appointed guardian shall fail to designate promptly a Successor Trustee, the State may apply to a court for such appointment and for settlement of account.

F. SIGNATURES AND DECISIONS

Unless expressly provided otherwise in the event there are Co-Trustees hereof in this Agreement, the decision, act or deed of any one (1) of the Trustees shall be binding on all. All acts, deeds and transactions, including but not limited to, banking, securities and real estate transactions of any sort, with regard to this Trust Agreement or pursuant thereto shall require the signature of only one (1) Trustee even though there shall be Co-Trustees available to act.

G. BOND

It is Settlor's request and direction that no bond or other security shall be required of any Trustee named hereunder.

H. DISCRETION

All decisions, acts, transactions and deeds of a named Trustee herein shall be deemed discretionary and not subject to judicial review in any jurisdiction unless fraudulent, wanton, criminal or gross negligent acts of a Trustee are first proven against him. No Trustee shall be liable or responsible for an erroneous act or omission made in good faith.

ARTICLE VII

MISCELLANEOUS

The paragraph and article headings used herein are for convenience only and shall not be resorted to for interpretation of this Trust. Wherever the context so requires, the masculine gender shall include the feminine and neuter gender (and vice versa) and the singular shall include the plural (and vice versa). Wherever the terms "Settlers" or "Trustees" (plural) are

noted they shall also mean "Settlor" or "Trustee" (singular), as the case may be, and vice versa, unless the context would preclude such interpretation. If any portion of this Trust is held to be void or unenforceable, the balance of this Trust shall nevertheless be carried into effect.

IN WITNESS WHEREOF, the parties specified above as Settlor and Trustee have signed and sealed this Trust Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
**\*REP**, Settlor & Trustee

The foregoing instrument, consisting of \_\_\_\_\_, (\_\_\_\_\_) typewritten pages and "Exhibit A" attached, was signed, sealed, published and declared by the Settlor in our presence and the presence of each other and we, at the Settlor's request and in Settlor's presence and in the presence of each other, have hereunto subscribed our hands as witnesses this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_ Residing at \_\_\_\_\_

\_\_\_\_\_ Residing at \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF BREVARD

Before me personally appeared **\*REP** as Settlor above noted, to me well known and known to me to be the person described in and who executed the foregoing Trust Agreement and who acknowledged to and before me that he executed said instrument in the capacities and for the purposes therein expressed.

WITNESS my hand and officials seal this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

ACCEPTANCE BY TRUSTEES

The undersigned hereby accepts the trust imposed by this Trust Agreement and agrees  
to serve as Trustee upon the terms and conditions therein set forth.

SIGNED, SEALED, AND DELIVERED

IN THE PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**\*REP** (Trustee)

THIS INSTRUMENT PREPARED BY:  
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